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In the

UNITED STATES SUPREME COURT

October Term, 1952

No. 138

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

HALL C. SMITH,
Respondent.

PETITION ON SECOND APPEAL

Comes now respondent Hall C. Smith and files this as his second appeal herein for the reasons as set forth.

The U. S. Supreme Court in its decision of *Commissioner* v. *Hall C. Smith,* 345 U.S. 278; 97 U.S. Lawyers Edition 611, ordered a reversal of the judgment.* *The Court of*

*In the Petition for Rehearing the issues were set forth as follows:

"The Tax Court was confronted with the situation where the respondent had received $87,000 as salary during the year 1943 and through withholding and prepayment tax, he paid some $60,000 thereon in income taxes. *The $60,000 was received and held by the Commissioner, and in effect, never was in the possession of the taxpayer, so that he could have economic use or benefit thereof.* Thereafter, in a proceeding held in the Tax Court, which is contained in the record in this Court (in Case No. 545 October term 1950,) the respondent was held liable as transferee for $57,000 of the $87,000 salary. The Commissioner asserted a transferee liability against the respondent for the $57,000 and as a net result, the respondent would have been faced with paying $117,000 as income tax and transferee liability on $87,000 of salary. This meant that the Commissioner was seeking to recover from respondent in income tax and transferee liability approximately 140% of the amount he received. *This is in no way a tax on income when it requires you to pay $1.40 on every $1.00.*

Appeals (Sixth Circuit) had before it a Motion of this respondent to dismiss the appeal on the ground that it was not perfected in time. In respondent's Brief in the Court of Appeals the following argument was set forth:

"1. Where, by stipulation of the parties, and approval of Court, an extension of time is given for 60 days after the final review of a related case for printing of record, etc. and the Commissioner delays 5 months after final review before he proceeds with the printing of the record, all in violation of the stipulation, should a motion to dismiss the appeal be sustained?

"ANSWER: Taxpayer contends that the motion should be granted.

"It is the contention of the taxpayer that the rules of Court are adopted for the purpose of regulating the work of the Court as well as advising and protecting the litigants. The taxpayer was willing to stipulate that the Commissioner may delay the printing of record and proceeding with the Appeal for a period of 60 days after the case became final by review. This stipulation was entered into, having in mind, that within 60 days the Commissioner could very well comply with the rules of Court, and file the record and briefs.

"Commisioner's statement of facts as it appears in his brief, on pages 3 and 4, indicates that efforts were made by the Clerk of this Court, as well as counsel for the tax-

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"Having in mind that the Tax Court was redetermining the tax liability of the Petitioner for the year 1943, and that it had theretofore held the Petitioner liable as transferee for $57,000 of the $87,000, the Court found (transcript of record, page 24):

"'Tax Court's determination in the transferee proceeding is not attacked in this proceeding. The Petitioner's only contention here, is that since it has been determined by this Court that he is liable in equity as a transferee for the unpaid taxes of the full amount of excessive compensation distributed to him in the taxable year, such excessive salary may not be included in his taxable income.'"

payer to get him to proceed in accordance with the stipulation.

"The granting of the motion to dismiss, as we view it, is within the sound discretion of the Court. We, however, contend that the exercise of such a sound discretion requires that the motion be granted."

Petitioner's Brief reads as follows:

"On September 14, 1951, the taxpayer filed a motion to dismiss this appeal "in accordance with the rules of this Court." The Commissioner's answer to said motion, shows the following facts:

"On January 3, 1950, a petition for review of the Tax Court's decision in this case having been duly filed, this Court approved the stipulation of counsel that the printing of the record, the filing of brief, and any further action herein by the parties or by the Court be postponed until sixty days after the decision of the Tax Court in the case of *The Charles E. Smith and Sons Co., et al.* v. *Commissioner* became final after review. It was further stipulated that if this cause was not disposed of by agreement of the parties before the expiration of that sixty day period, either party to this cause could proceed further as then advised.

"On October 20, 1950, this Court affirmed the decision of the Tax Court in the aforementioned proceeding, and on March 26, 1951 a Petition for a Writ of Certiorari was denied by the United States Supreme Court.[1]

"Subsequently, on June 21, 1951 the Clerk of this Court by letter addressed to counsel for Commissioner requested advice as to the disposition of the appeal pending this proceeding.

---

[1] Motion for leave to file petition for rehearing denied May 21, 1951.

"On June 28, 1951 counsel for Commissioner advised the Clerk of this Court that the question as to the disposition of this case was under consideration and that he would be promptly advised as soon as a final decision with regard thereto was reached. A copy of this letter was forwarded to Sol Goodman, Esquire, counsel for the taxpayer.

"Subsequently in a letter dated August 15, 1951, Mr. Goodman referring to the aforementioned letter of June 28, 1951 inquired as to the Commissioner's decision with regard to proceeding with his appeal in this case. On August 31, 1951 Mr. Goodman was informed by letter that the appeal would be prosecuted and on September 4, 1951 the Clerk of this Court was similarly informed.

"On September 7, 1951 the Clerk of this Court by letter requested authorization to print the record on appeal in this proceeding. On September 21, 1951 the requested authorization was mailed to the Clerk.

"Subsequent to the filing of this answer, on October 15, 1951, the printed record on appeal was received by counsel for the Commissioner from the Clerk of this Court."

The record in the Supreme Court indicates that the last extension granted by the Court of Appeals (R-29) gave the Commissioner to August 19, 1949 the time within which to file the record on review. The record on review was not filed until October 11, 1951. *This question was not passed on by the Court of Appeals because it had disposed of the case by affirming the Tax Court.*

In the recent case of *Western Pacific Railroad Corp.* v. *Western Pacific Railroad Co.*, 345 U.S. 247, the Court stated:

> "In the exercise of its general power to supervise the administration of justice in the federal courts, the responsibility lies with the Supreme

Court to define the requirements to be observed by the Court of Appeals in the application of § 46 (c) of the Judicial Code of 1948, dealing with the power of the Court to hear a case en banc."

In the Opinion, at page 657, the Court said:

"But even if the statute grants only power plus the discretion for its exercise, that does not mark the end of our review of the en banc phase of this case. The en banc power, confirmed by § 46 (c), is, as we emphasized in the Textile Mills Case, a necessary and useful power — indeed too useful that we should ever permit a court to ignore the possibilities of its use in cases where its use might be appropriate. If § 46 (c) is to achieve its fundamental purpose, certain fundamental requirements should be observed by the Courts of Appeals. In the exercise of our 'general power to supervise the administration of justice in the federal courts,' the responsibility lies with this Court to define these requirements and insure their observance."

Subsequent to the decision by this Court, respondent herein made application and request for a hearing upon respondent's Motion to dismiss the Appeal in the United States Court of Appeals (Sixth Circuit). On October 16, 1953, said Motion to Dismiss the Appeal was denied. A copy of the Order is attached hereto.

A motion to dismiss was granted in the following recent cases:

U. S. v. *Consolidated Freight Ways Co.*, 178 F (2) 756.
Birmingham Fire Ins. Co. v. *Kight*, 195 F (2) 178.
Holland v. *Capitol Transit Co.*, 184 F (2) 686, cer. den. 341 U.S. 954.
Beecher v. *Smithson*, 205 F (2) 113.
Citizens Protective League v. *Clark*, 178 F (2) 703.

This Court has permitted a second appeal in a case ever since the decision in the case of *Francis E. Hinckley* v. *Levi P. Morton, et al.*, 103 U.S. 765:

> "Second appeals have always been allowed to bring up proceedings subsequent to the mandate and not settled by the terms of the mandate itself."

At the time of oral argument on the original appeal, the Chief Justice inquired whether or not there was anything in the record which distinguished this case from the companion case of *Healy* v. *C.I.R.* Counsel at that time was compelled to answer that no distinction existed because the Court of Appeals had not at that time ruled on the Motion to Dismiss. Since its ruling on the Motion to Dismiss, in which it denied said Motion, this Court should grant a review through a second appeal and upon consideration find that the decision of the Court of Appeals is in error.

We respectfully submit that this Court should permit a second appeal in order to consider whether a substantial question exists on respondent's Motion to Dismiss, and to consider and decide the Motion of respondent to dismiss the appeal (because the record for review was not filed timely) in favor of Respondent.

Respectfully submitted,

SOL GOODMAN,
1016 Union Trust Bldg.,
Cincinnati 2, Ohio,
Attorney for Respondent.

No. 10,979

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v.

HALL C. SMITH,
Respondent.

ORDER
(Filed October 16, 1953)

Before ALLEN, McALLISTER and MARTIN, Circuit Judges.

This case came on to be heard upon the request for hearing upon respondent's motion to dismiss the appeal;

And it appearing that upon June 3, 1953 this court, in accordance with the decision of the Supreme Court of the United States, *Healy* v. *Commissioner of Internal Revenue*, 345 U.S. 278, reversed the decision of the Tax Court of the United States and remanded the cause for further proceedings consistent with the mandate and opinion of the Supreme Court of the United States;

IT IS ORDERED that the request for hearing be denied;

AND IT IS FURTHER ORDERED that the motion to dismiss the appeal be denied.

Approved for entry:

/s/ Florence E. Allen,
United States Circuit Judge.

RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

14. Review of Decisions of the Tax Court of the United States

(1) *Tax Court of the United States — Review, How Taken — Petition for Review.* (a) A review of a decision of the Tax Court of the United States shall be taken by filing a petition for review with the clerk of the Tax Court within the time prescribed by statute for the filing of such petition. (b) Two conformed copies of the petition shall be filed at the same time. (c) The petition for review shall be signed by the petitioner or his attorney of record and shall set forth the parties seeking the review, the taxable period or periods involved, the court by which review is sought and the necessary allegations to establish venue. (d) The clerk of the Tax Court shall make service of the petition in a manner similar to that prescribed for the service of notice of appeal in Rule 73 (b) of the Federal Rules of Civil Procedure.

(2) *Same — Record on Review.* The provisions of Rule 73 (g), Rule 75, and Rule 76 of the Federal Rules of Civil Procedure shall, with appropriate substitutions, govern the preparation and filing of the record.

* * *

19. The Docket — Docketing — Dismissing

(3) In civil cases the appellant shall file the certified record on appeal and cause the case to be docketed pursuant to Rule 73 (g) of the Federal Rules of Civil Procedure.

(7) *The Clerk shall refuse to file a record and docket any cause out of time unless, upon written motion with due notice to opposing counsel, the court directs that such case be filed and docketed.*

73. Appeal to a Court of Appeals

(g) *Docketing and Record on Appeal.* The record on appeal as provided for in Rules 75 and 76 shall be filed with the appellate court and the appeal there docketed within 40 days from the date of filing the notice of appeal; except that, when more than one appeal is taken from the same judgment to the same appellate court, the district court may prescribe the time for filing and docketing, which in no event shall be less than 40 days from the date of filing the first notice of appeal. In all cases the district court in its discretion and with or without motion or notice may extend the time for filing the record on appeal and docketing the appeal, if its order for extension is made before the expiration of the period for filing and docketing as originally prescribed or as extended by a previous order, but the district court shall not extend the time to a day more than 90 days from the date of filing the first notice of appeal.

SUPPLEMENTAL PETITION ON SECOND APPEAL

PROCEEDINGS IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES COURT OF APPEALS

For The Sixth Circuit

Cincinnati, Ohio

Case No. 10979

COMMISSIONER OF INTERNAL REVENUE,
Appellant,

vs.

HALL C. SMITH,
Appellee.

MOTION TO DISMISS

(Filed September 13, 1951.)

Comes now Appellee and moves the Court for an order dismissing this proceeding on the following grounds:

(1) On January 3, 1950, a stipulation was entered providing that the printing of the record, the filing of briefs and any further action herein by the parties or by the Court, be postponed until 60 days after the decision in the case of The Chas. E. Smith & Sons Co., et al versus Commissioner, now pending before this Court, unless disposed of by agreement of both parties.

(2) Appellee states that this Court disposed of said cause on October 20, 1950, its decision being reported in 184 F. 2d, 1011 and a Petition for a Writ of Certiorari was overruled by the U. S. Supreme Court on March 26, 1951.

(3) Appellee states that the Clerk of this Court and Counsel for Appellee have, at various times, written to appellant calling its attention to the provisions of the stipulation but notwithstanding such communications, ap-

pellant has failed to file briefs in said cause or prepare or file the record in said cause.

Appellee therefore moves the Court for an order dismissing this appeal in accordance with the provisions of the rules of this Court.

/s/ SOL GOODMAN
Attorney for Appellee

PROOF OF SERVICE

Hon. Theron L. Caudle
Washington, D. C.

Take notice said motion will be presented to the Court on October 3, 1951.

The undersigned, Attorney for Appellee, hereby certifies that he has mailed a copy of this motion to the Attorneys for Appellant.

/s/ SOL GOODMAN
Attorney for Appellee

PETITIONERS' ANSWER TO MOTION TO DISMISS PETITION FOR REVIEW

(Filed September 24, 1951.)

Now comes the Commissioner of Internal Revenue, the petitioner on review in the above entitled cause, and, by his attorneys, respectfully submits this, his answer to the Respondent's Motion to Dismiss the Petition for Review herein, and respectfully submits that said motion be denied, for the following reasons:

1. On January 3, 1950, a petition for review of the Tax Court's decision in this case having been duly filed, this Court approved the stipulation of counsel that the print-

ing of the record, the filing of brief, and any further action herein by the parties or by the Court be postponed until sixty days after the decision of the Tax Court in the case of *The Charles A. Smith and Sons Co., et al* v. *Commissioner* became final after review. It was further stipulated that if this cause was not disposed of by agreement of the parties before the expiration of that sixty day period, either party to this cause could proceed further as then advised.

2. On October 20, 1950, this Court affirmed the decision of the Tax Court in the aforementioned proceeding, and on March 26, 1951 a Petition for a Writ of Certiorari was denied by the United States Supreme Court.

3. Subsequently, on June 21, 1951 the Clerk of this Court by letter addressed to counsel for petitioner requested advice as to the disposition of the appeal, pending in this proceeding.

4. On June 28, 1951 counsel for petitioner advised the Clerk of this Court that the question as to the disposition of this case was under consideration and that he would be promptly advised as soon as a final decision with regard thereto was reached. A copy of this letter was forwarded to Sol Goodman, Esquire, counsel for the respondent.

5. Subsequently in a letter dated August 15, 1951, Mr. Goodman referring to the aforementioned letter of June 28, 1951 inquired as to the petitioner's decision with regard to proceeding with his appeal in this case. On August 31, 1951 Mr. Goodman was informed by letter that the appeal would be prosecuted and on September 4, 1951 the Clerk of this Court was similarly informed.

6. On September 7, 1951 the Clerk of this Court by letter requested authorization to print the record on appeal in this proceeding. On September 21, 1951 the requested authorization was mailed to the Clerk. As of this date no further communication has been received from the Clerk respecting this appeal.

7. The petitioner, through his counsel, is ready to and desirous of prosecuting the review as speedily as possible believing that his contentions herein are meritorious and are entitled to consideration by this Court.

WHEREFORE, in view of the foregoing, the petitioner respectfully prays that the Motion to Dismiss be denied and that he be allowed to prosecute the present review.

Dated September 21, 1951.

Respectfully submitted,

/s/ THERON LAMAR CAUDLE
Assistant Attorney General
ELLIS N. SLACK,
GRAHAM LOVING, JR.
Counsel for the Petitioner.
Address: Department of Justice
Washington 25, D. C.

ORDER

(Filed October 3, 1951.)

Before HICKS, Chief Judge; ALLEN and McALLISTER, Circuit Judges.

The motion of Respondent to dismiss the petition for review is passed until the hearing on the merits.

APPROVED FOR ENTRY:

/s/ XEN HICKS
Chief Judge

ORDER

(Filed October 16, 1953.)

Before ALLEN, McALLISTER and MARTIN, Circuit Judges.

This case came on to be heard upon the request for hearing upon respondent's motion to dismiss the appeal;

And it appearing that upon June 3, 1953 this court, in accordance with the decision of the Supreme Court of the United States, *Healy* v. *Commissioner of Internal Revenue*, 345 U. S. 278, reversed the decision of the Tax Court of the United States and remanded the cause for further proceedings consistent with the mandate and opinion of the Supreme Court of the United States;

IT IS ORDERED that the request for hearing be denied;

AND IT IS FURTHER ORDERED that the motion to dismiss the appeal be denied.

Approved for entry:

/s/ FLORENCE E. ALLEN
United States Circuit Judge.

CERTIFICATE OF CLERK

I, Carl W. Reuss, Clerk of the United States Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the following proceedings:

Motion of respondent to dismiss petition, filed September 13, 1951.

Petitioner's answer to motion to dismiss, filed September 24, 1951.

Order passing motion to dismiss, filed October 3, 1951.

Order denying request for hearing and denying motion to dismiss appeal, filed October 16, 1953.

in the case of Commissioner of Internal Revenue vs. Hall C. Smith, No. 10,979, as the same remains upon the files and records of said United States Court of Appeals for the Sixth Circuit, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 10th day of December, A. D., 1953.

CARL W. REUSS
Clerk of the United States Court
of Appeals for the Sixth Circuit

(SEAL)

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 532

HALL C. SMITH, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The Court of Appeals rendered no opinion.

JURISDICTION

The order of the Court of Appeals denying taxpayer's motion to dismiss the Commissioner's appeal was entered on October 16, 1953. (R. 5.) The "Petition on Second Appeal", now being treated as a petition for a writ of certiorari, was filed January 13, 1954, and invokes the jurisdiction of this Court under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Whether the court below erred in denying a motion to dismiss the Commissioner's appeal on the asserted ground that the record was not timely filed.

STATEMENT

This case was previously before the Court on its merits (No. 138, October Term, 1952), and was decided by the Court against the taxpayer (*Commissioner v. Smith*, 345 U. S. 278). The present petition by the taxpayer is from an order of the court below, entered subsequent to decision by this Court on the merits of the case, denying a motion to dismiss the Commissioner's appeal which taxpayer had filed when the case was originally pending in the court below. The following is a chronological statement of the facts pertinent to consideration of the petition:

After the Commissioner filed a timely petition for review of the Tax Court's decision by the court below, the time for filing the record was extended to August 19, 1949, by successive orders entered by the Tax Court and by the court below. (See R. 28-29, No. 138, October Term, 1952.) The clerk of the Tax Court has advised us that the record was transmitted to the court below on August 12, 1949.

In December 1949 the parties entered into a stipulation, which was approved by the court below on January 3, 1950, postponing the printing of the record, the filing of briefs and any further action by the parties or by the court below until 60 days after the decision of the Tax Court in *Charles E. Smith &*

Sons Co. v. *Commissioner* became final after review.* It was further stipulated that, if the case was not disposed of by agreement of the parties before the expiration of the 60-day period, either party could proceed further as then advised. (R. 2-3.)

The decision of the Tax Court in *Charles E. Smith & Sons Co.* v. *Commissioner* was affirmed by the court below on October 20, 1950 (184 F. 2d 1011), and certiorari was denied on March 26, 1951 (340 U. S. 953). A motion for leave to file a petition for rehearing was denied on May 21, 1951 (341 U. S. 937).

On June 28, 1951, the clerk of the court below was advised that the question as to the disposition of the instant case was under consideration by the Commissioner, and that he would be advised as soon as a decision was reached. A copy of the letter to the clerk was forwarded to counsel for the taxpayer, who on August 15, 1951, wrote inquiring as to the Commissioner's decision. On August 31, 1951, counsel for the taxpayer was notified by letter that the appeal would be prosecuted. On September 4, 1951, the clerk of the court below was similarly notified. On September 21, 1951, the clerk's request for authority to print the record was granted. (R.

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* Our files show that, during the period between the filing of the record and the execution of this stipulation, the printing of the record was postponed because of the submission by taxpayer of an offer in compromise and because of the pendency of an appeal in the related case of *Charles E. Smith & Sons Co.* v. *Commissioner*, decided by the Tax Court on May 12, 1947 (1947 P-H T. C. Memorandum Decisions, par. 47,128).

3.) Our files show that the printed record was filed on October 11, 1951.

On September 13, 1951, shortly before the printing of the record, taxpayer filed a motion to dismiss the Commissioner's appeal (R. 1-2), apparently on the ground that the Commissioner had "failed to file briefs in said cause or prepare or file the record in said cause." The Commissioner filed an answer to the motion on September 24, 1951, reciting most of the above facts. (R. 2-4.) On October 3, 1951, the court below entered an order stating that the taxpayer's motion to dismiss "is passed until the hearing on the merits". (R. 4.)

The court below subsequently decided the case on its merits in taxpayer's favor (194 F. 2d 536), without passing on the motion to dismiss. This Court granted the Commissioner's petition for a writ of certiorari, and on April 6, 1953, reversed the decision of the court below on the merits. *Commissioner* v. *Smith*, 345 U. S. 278).

At some subsequent time, not shown by the record or our files, taxpayer requested the court below for a hearing on its motion to dismiss the Commissioner's appeal. (R. 5; Pet. 5.) On October 16, 1953, the court below entered an order denying both the request for a hearing and the motion to dismiss the appeal. (R. 5.)

ARGUMENT

Taxpayer asserts no reason for the granting of a writ of certiorari and does not even attempt to

show error on the part of the court below in denying his motion to dismiss the Commissioner's appeal. He simply requests this Court to consider and decide that his motion to dismiss the Commissioner's appeal should be granted "because the record for review was not filed timely". (Pet. 6.)

Actually, the "record for review" (Pet. 6) was timely filed. In asserting that it was not filed until October 11, 1951 (Pet. 4), taxpayer has confused the record on review with the printed record which was filed on October 11, 1951. The "record for review" (Pet. 6) or "record on review" (Pet. 4) had been transmitted to the court below by the Tax Court on August 12, 1949, and was thus filed prior to August 19, 1949, the date to which the time for filing the record had been extended by orders of the Tax Court and of the court below (see R. 28-29, No. 138, October Term, 1952). Those extensions of time for filing the record were properly granted (see Rule 73(g), Federal Rules of Civil Procedure; *Pyramid Motor Corp.* v. *Ispass,* 330 U. S. 695, 702-705), as taxpayer apparently concedes (Pet. 4).

There was in this case a delay in printing the record, but that was due largely to a stipulation entered into by the parties postponing the printing of the record and all other proceedings in the case until 60 days after the decision of the Tax Court in *Charles E. Smith & Sons Co.* v. *Commissioner,* on May 12, 1947 (1947 P-H T.C. Memorandum Decisions, par. 47,128), became final after review. The stipulation also provided that, if the case was not disposed of

by agreement of the parties before the expiration of the stipulated postponement period, "either party to this cause could proceed further as then advised". (R. 3.) Shortly after, but not immediately after, the expiration of the stipulated postponement period, the Commissioner notified counsel for taxpayer and the clerk of the court below that the appeal would be prosecuted and sent the clerk the requested authorization for printing the record. (See Statement, *supra*, p. 3.) In the interval between notification that the appeal would be prosecuted and the actual printing of the record, taxpayer filed his motion to dismiss the Commissioner's appeal. (See Statement, *supra*, pp. 3-4.) The motion was apparently based on the ground that the Commissioner had "failed to file briefs in said cause or prepare or file the record in said cause" (R. 2) and was thus addressed to the discretion of the court below, as taxpayer seems to admit (Pet. 3). Since the record had in fact been timely filed and the short delay in printing it after expiration of the stipulated postponement period was the only basis taxpayer had for complaint, the court below, which originally "passed" the motion (R. 4), did not abuse its discretion in denying the motion when taxpayer asked for a hearing on the motion after this Court had decided the case on its merits. Cf. *Pyramid Motor Corp.* v. *Ispass*, 330 U. S. 695, 702-705.

CONCLUSION

The court below correctly denied taxpayer's motion to dismiss the Commissioner's appeal, and no reason is shown for the granting of the petition for a writ of certiorari. The petition should be denied.

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General.

H. BRIAN HOLLAND,
Assistant Attorney General.

ELLIS N. SLACK,
MELVA M. GRANEY,
Special Assistants to the Attorney General.

FEBRUARY 1954.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1954 288138 000